

REPORT - PLANNING COMMISSION MEETING
February 24, 2005

Project Name and Number: Bayside Business Park PGP (PLN2004-00322)

Applicant: King & Lyons

Proposal: Revisions to a previously approved preliminary grading plan for phased construction of nine industrial building lots, and the extension of Fremont Boulevard.

Recommended Action: Approve, based on findings and subject to conditions.

Location: The proposed project is generally located on the west side of Interstate 880, north of Dixon Landing Road, south of the current Fremont Boulevard terminus.

APN: 519-0820-002-14, 519-0820-002-18

Area: 159 Acres

Owner: Bud Lyons

Agent of Applicant: John Hanson, Project Manager - King & Lyons

Consultant(s): Steve Reynolds, Kier & Wright, Frank Berlogar, Berlogar Geo Technical Consultants
John Zentner, Zentner and Zentner

Environmental Review: An Addendum to the Environmental Impact Report EIA-89-56 (SCH#89030071) for vesting tentative tract map and grading plan that was approved by the City Council on March 1, 1994 has been prepared and is included in this report

Existing General Plan: Restricted Industrial

Existing Zoning: I-R, Industrial Restricted

Existing Land Use: Vacant, abandoned private airfield

Public Hearing Notice: Public hearing notification is applicable. Nine notices were mailed to owners and occupants of property within a minimum radius of 300 feet of the site, and to Tri-City Ecology Center as an interested party. The notices were mailed on February 17, 2005. A Public Hearing Notice was delivered to The Argus newspaper on February 14, 2005 to be published by February 17, 2005.

Executive Summary: The proposed project includes changes in finished grade elevations to the previously approved grading plans (GP-92-11, and PLN2000-00167) to implement Bayside Business Park, Phase II. Revisions to the original grading plan approved by the Planning Commission (GP 92-11) were required to comply with the recommendations and permit approvals from the U.S. Fish & Wildlife Service (USFWS) and U.S. Army Corps of Engineers (ACOE) to achieve no net loss of wetlands on the project site (PLN 2000-00167). The revised grading plan, approved in August 2000, required approximately 90 acres located on the westerly side of the property to be graded to accommodate restoration of wetlands. The remaining 59 acres were to be graded to accommodate nine industrial lots and the extension of Fremont Boulevard to Dixon Landing Road. The proposed grading plan revision will permit the short-term surcharging (stockpiling) of soil, resulting in the temporary increase in the pad elevations on lots 1 through 5. The stockpiled soil will eventually be used to elevate lots 6 through 9 once the wetland mitigation program is completed. The proposed modifications would:

- Permit, subject to conditions, the temporary storage of additional surcharge (stockpile) of soil on lots 1 through 5. Upon removal of the surcharge (stockpile) soil, lots 1 through 5 will comply with the original design for the rough grading elevation as approved in August of 2000 (PLN 2000-00167);
- Require stockpiled soil to be used as fill material on lots 6 through 9 once the wetland mitigation program has met the prescribed performance level.

Development of lots 1 through 9 and the Fremont Boulevard extension will occur in accordance to the previously approved vesting tentative tract map. Best Management Practices (BMP's) for erosion protection will remain in place and continue to be monitored and maintained during all grading operations, and all import material will continue to be tested for environmental compliance.

The proposed grading plan revisions will not impact the previously approved wetland mitigation plan. The original vesting tentative tract map (including lot configuration and extension of Fremont Boulevard improvements) has not changed. Thus, staff is recommending approval of the revised grading plan, as conditioned.

Previous Actions: An Environmental Impact Report (EIR-89-56), rezoning (Z-89-8), a vesting tentative tract map (Tract 6591), a preliminary grading plan (GP-92-11), and a development agreement (DA-92-1) was approved by the City Council on March 1, 1994 for the 159-acre project site. On August 10, 2000, the Planning Commission approved minor revisions to the previously approved preliminary grading plan and wetland mitigation plan (PLN 2000-00167). The approved project designated 90 acres adjacent to Coyote Creek and the existing Wildlife Refuge as wetlands, and included a mitigation plan that would restore the lower wetlands area while providing some raised areas for protection of the salt marsh harvest mouse habitat. The remaining 59 acres of upland area was approved for nine developable lots (adjacent to Interstate 880), and a right-of-way and complete improvements for extension of Fremont Boulevard to Dixon Landing Road.

In November 2000, a grading permit was issued consistent with the approved preliminary grading plan (PLN2000-00167). The grading permit allowed for the construction of ponds to establish the salt marsh harvest mouse habitat. The permit also allowed for the rough grading of pads for lots 1 through 5. The average permitted pad elevation was approximately 13 feet.

Background: The proposed project, commonly known as Bayside Business Park, Phase II (BBP II) and associated Wetlands Mitigation Plan was approved on March 1, 1994. As a condition of approval, the applicant was required to apply for Federal and State resource agency environmental permits related to proposed wetland fills and Wetland Mitigation Plan. The agencies included the U.S. Army Corps of Engineers (Corps), the U.S. Fish and Wildlife Service (USFWS), the Regional Water Quality Control Board (RWQCB), the Bay Conservation and Development Commission (BCDC) and the California Department of Fish and Game (CDFG). The agencies worked with the project applicant on refinements to the City-approved Wetland Mitigation Plan and agreed upon changes which would require less fill of wetlands and less long-term maintenance while ensuring increased mitigation effectiveness. The preliminary grading plan approved by the Planning Commission in August 2000 was based on the requirements of those resource agencies.

To comply with the conditions of approval and the resource agency permits requirements, the applicant is required to monitor progress on implementing the wetlands restoration and annually report to staff on that progress. Staff has reviewed the monitoring report. That monitoring report is included in the staff report on the annual review of the Development Agreement, which is also be concurrently presented to the Planning Commission for consideration (see report from King & Lyons Development Agreement).

Project Description: The project grading is being done in phases. The first phase consisted only of the wetland restoration and enhancement work and the excavation and fill needed to rough grade the first five lots. The next phase, grading of the remaining four lots, construction of buildings on all the lots, and the Fremont Boulevard construction, will not occur until specific performance standards are met in the restored and enhanced marshes, a process which is expected to take between 1 and 5 years.

Applicant is now requesting revisions to a previously approved preliminary grading plan (PLN2000-00167) to allow the retention of additional temporary stockpiling soil for use as surcharge on lots 1 through 5, which has been performed prior

to approval by the Planning Commission. Because the stockpiled soil is temporary, the applicant did not previously understand the need for a revision to the approved grading plan. The applicant claims that the surcharged soil acts as a weight that helps compact the building pad. In this case, the surcharged soil, approximately 340,000 cubic yards, has already been placed in a stockpiled condition on lots 1 through 5. It will be used as engineered fill on the future phase 2 grading operation on lots 6 through 9. The project grading phases are summarized in the August 2000 staff report (Informational 2).

Project Analysis: Staff has analyzed the proposed grading plan revision and believes that it is in substantial conformance with the approved grading plan. As indicated in the earlier paragraph, the grading revision is a result of the storage of approximately 321,800 cubic yards of stockpile material. The stockpiled soil has an average elevation of 19 feet, approximately 6 feet taller than the originally approved grading. Staff believes this temporary visual impact is not significant because of the location of the site in an underdeveloped industrial area. The proposed grading plan revision does not change the wetland mitigation program related to the upland marshes. The marshes and habitat improvements have been established and are being monitored as part of the ongoing mitigation program. The proposed minor revisions will not deviate from the original approval because upon removal of the stockpiles, the site will comply with original project elevations.

The original project conditions of approval remain unchanged and are incorporated by reference into the proposed revised grading plan (Condition 1). Additional conditions of approval are included in Exhibit "B" to reflect the grading plan refinements.

General Plan/Zoning Conformance: The existing General Plan designation for the project site is Restricted Industrial, and the project site is zoned I-R, Restricted Industrial. The applicant is not proposing the construction of structures at this time, however, it is anticipated that industrial buildings will be constructed in the future on the nine lots to accommodate uses (e.g., R&D facilities, manufacturing, engineering, etc.) permitted in the I-R district. The development of the project site for future industrial uses as permitted in the I-R district implements, and is consistent with General Plan Land Use Goal 3 and Policy 3.2 of providing "sufficient industrial land to provide a diversified industrial base to meet the employment needs of the City's present and future workforce". The revisions to the preliminary grading plan are requested to facilitate the future development of industrial buildings and associated improvements on these nine lots. The proposed project would thus be consistent with this General Plan goal and policy, as well as other applicable Zoning and Grading regulations.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. Adopted regulations require discharges of storm water associated with new development and construction to submit a Notice of Intent (NOI) to the State of California for activities disturbing five acres of land area. The NOI is to include the development and implementation of a Storm Water Pollution Prevention Plan emphasizing Best Management Practices for storm water. Conditions are proposed to reflect these requirements (Conditions 6,7, 10, 13 and 17).

Development Impact Fees: The revised grading plan itself will not trigger the requirement for development impact fees. However, when the Bayside Business Park, Phase II seeks building permits, such development project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, park facilities, capital facilities and traffic impact.

Addendum to EIR: The entire Bayside Business Park was the subject of an Environmental Impact Report (EIR-89-56) which was approved for the project as originally submitted. As described in the "Project Background" and "Project Description," the project has since been modified to further mitigate impacts to wetland resources to the satisfaction of the resource agencies, including U.S. Fish & Wildlife Service and U.S. Army Corps of Engineers. The environmental review of the proposed revisions of the grading plan to allow the additional stockpiled material on lots 1-5 identified the temporary increased height of the stockpile (approximately 6 feet) as a potential impact on views from Interstate 880. That impact is not regarded as significant because of the distance from the freeway (at least 240 feet from the project site); the relatively small increase in height; the short view time experienced by drivers and vehicle occupants; and, the temporary nature of the stockpiles.

The proposed revisions to the grading plan do not affect the development acreage, the mitigation area acreage, or the street extension. Staff has prepared an Initial Study for the project, which did not identify any new impacts. The existing mitigation measures previously adopted satisfactorily reduces all identified impacts to a less than significant level. Staff has concluded that there is no substantial evidence that the revisions to the grading plan constitute substantial project changes that would require revisions to the Final EIR.

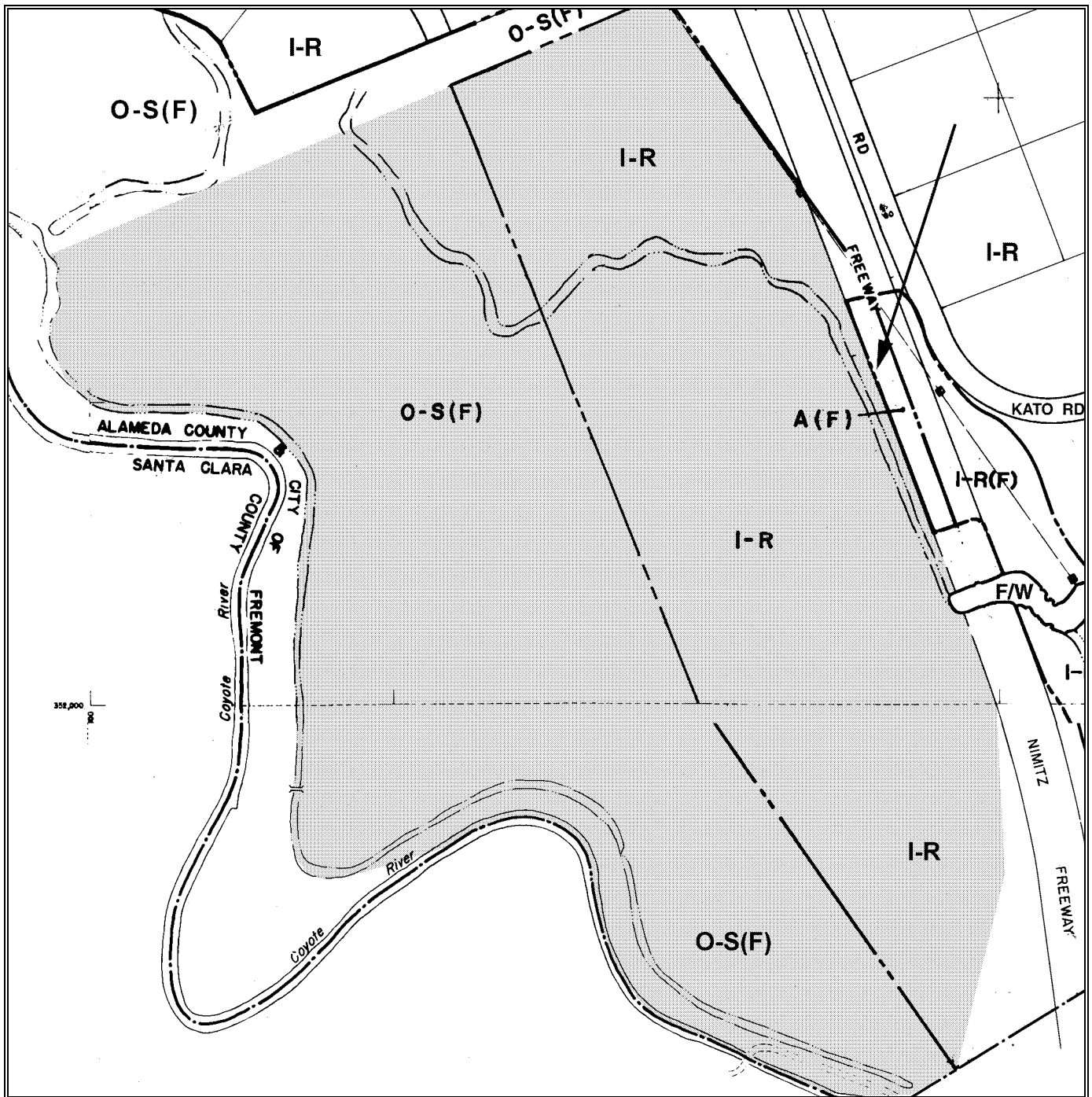
Enclosures: Exhibit "A" Preliminary Grading Plan
Informational 1 Findings and Conditions of Approval for TR 6591
Informational 2 August, 2000 PLN2000-00167 Staff Report, Findings and Conditions
Informational 3 Wetland Mitigation Plan, Zentner & Zentner, December 10, 2004 (enclosed also as part of Development Agreement Review, PLN2005-00085)
Informational 4 Applicant's Project Statement

Exhibits: Exhibit "A" Preliminary Grading Plan
Exhibit "B" Findings and Conditions of Approval for PLN2004-00322

Recommended Actions:

1. Hold public hearing.
2. Find PLN2004-00322 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter.
3. Find that an Addendum to the previously approved Final Environmental Impact Report 89-56 (SCH#89030071) is appropriate for the proposed minor revisions to the grading plan (project PLN2004-00322) as the revisions are minor and technical changes to the original grading plan, but none of the conditions described in CEQA Section 15162 (i.e. substantial project changes or new information or new significant effects) requiring the preparation of a Subsequent EIR have occurred. Find that the decision to prepare an Addendum represents the independent judgement of the City of Fremont.
4. Approve PLN2004-00322, as shown on Exhibit "A", subject to findings contained within this report and conditions on Exhibit "B".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

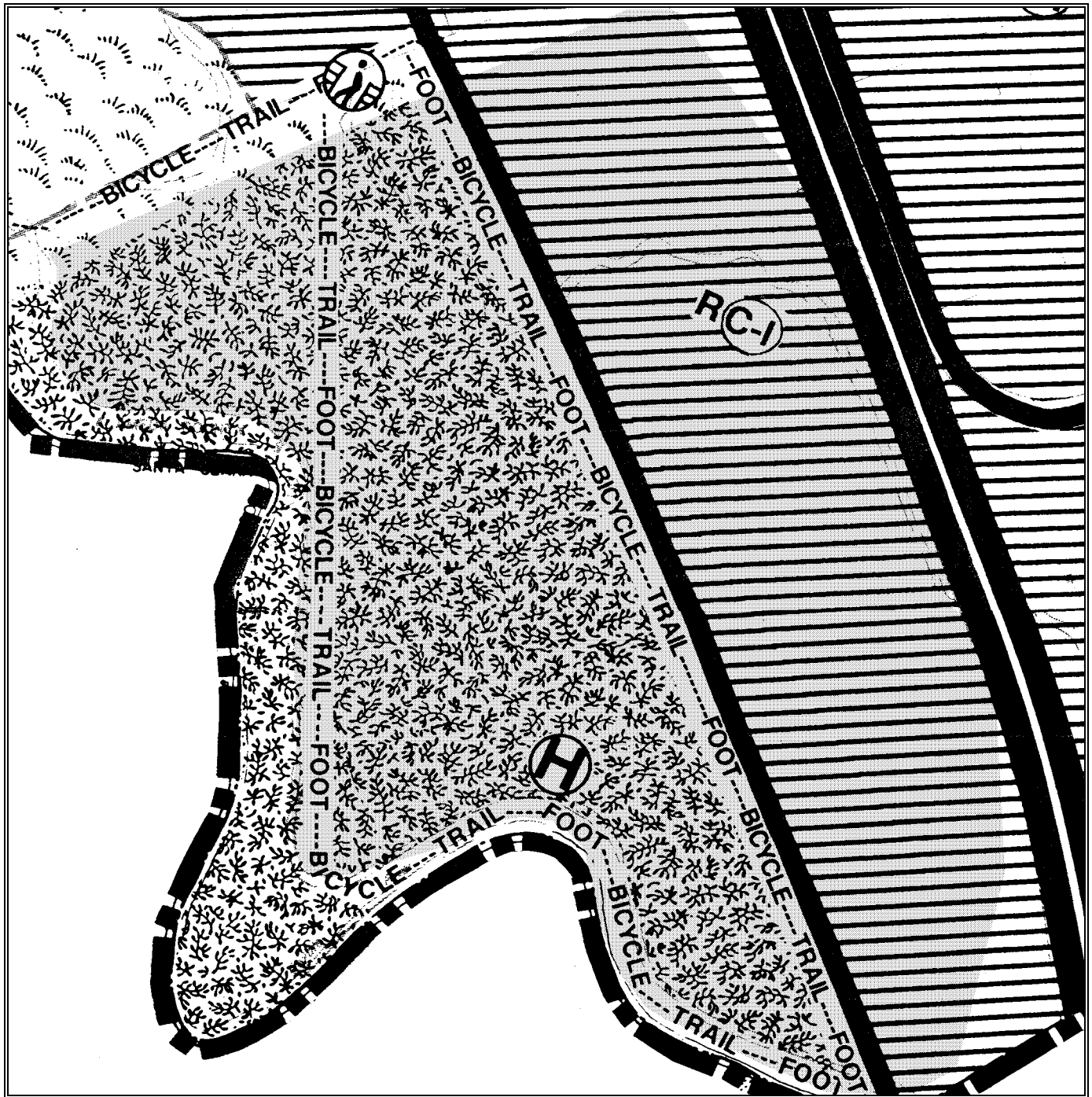


EXHIBIT "B"

King & Lyons – Fremont Boulevard Preliminary Grading Plan PLN2004-00322

FINDINGS:

Based upon testimony presented at the public hearing and information in the staff report, the Planning Commission finds as follows:

1. The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance because the proposed revisions to the grading plan only allow for additional soil stockpiling which will only been seen for short periods of time by persons traveling on the freeway or other roads.
2. Conformity, where applicable, to special concerns relating to the adopted Seismic Safety Element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology shall be accomplished at time of final map. Supplemental data and substantiation of conclusions may be required by the public works director upon city review of the reports. The proposed development is in a regulatory hazard zone for liquefaction, but the grading project is not subject to special studies. There is no evidence of presence of any fault or active slides within the project site per maps issued by the U.S. Geological Survey and the California Division of Mines and Geology.
3. The proposed project, the revised grading plan, will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont because the soil stockpiling is temporary in nature and subject to conditions which will prevent negative impacts.

CONDITIONS:

1. The project shall conform with Exhibit "A" (Preliminary Grading Plan) and all the conditions of approval of Tentative Tract Map 6591, PLN-2000-00167 and Development Agreement DA-92-1.
2. Approval of this preliminary grading plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
3. Approval of this revision to the preliminary grading plan shall run concurrent with the approval and any subsequent extensions of the tentative map for Tract 6591.
4. The applicant shall apply for a revision to the current grading permit that was issued in November 2000 to allow for the retention of the additional stockpiled soil, in accordance with Exhibit "A". The revised grading permit for the additional surcharging shall be reviewed in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Any modifications or changes required by the City Engineer to the additional stockpiled soil shall be implemented as conditioned in the revised grading plan.
5. Prior to the commencement of the grading work for Phase 2, which includes removing the surcharged soil on lots 1 through 5 and creating the building pads on lots 6 through 9, the applicant shall submit the subdivision improvement plans for Tract 6591, which include the extension of Fremont Boulevard. The subdivision improvement plans are subject to the review and approval of the City Engineer. The subdivision improvement plans shall conform to the approved tentative map for Tract 6591.
6. The applicant shall provide adequate dust control measures at all times during the grading and hauling operations. All trucks hauling export and import materials shall be provided with tarp cover at all times. Spillage of

haul materials and mud-tracking on the haul routes shall be prevented at all times. Any violation shall be subject to the suspension of the grading permit.

7. The source and haul route for the import fill shall be subject to the approval of the City Engineer prior to the issuance of the grading permit.
8. Grading and hauling operations shall be limited to the following hours:

7:00 a.m. to 7:00 p.m. – Monday through Friday
9:00 a.m. to 6:00 p.m. – Saturday and Sunday
9. The developer shall submit a Letter of Map Revision based on fill (LOMR-F) to FEMA upon completion of rough grading for the building pads on any proposed lots (1 through 9) to remove the lots proposed for development from the 100-year floodplain.
10. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
11. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan for each lot. Deviation over one foot may be referred to the Planning Commission subject to the approval of the City Engineer.
12. All on-site truck and construction equipment traffic shall be confined to the designated haul road in the proposed development (Lots 1 through 9) and the future Fremont Boulevard. The hauling of fill material to the site shall not occur during the a.m. peak traffic hours of 7:00 - 9:00 a.m. or the p.m. peak traffic hours of 4:00 - 6:00 p.m. of the following intersections:
 - I-880/Dixon Landing Rd
 - Fremont Blvd. south of Cushing Pkwy
 - Fremont/Cushing/I-880 intersection.

This condition is subject to the review and approval of the City Engineer. The peak hours of this condition may be modified as deemed necessary by the City Engineer.
13. The applicant shall provide a 30- foot by 50-foot compacted aggregate bed for the haul road at the entry to the site to prevent mud tracking from the haul trucks going into and coming out of the site. The thickness of the aggregate base to be determined by the applicant's soils engineer and subject to the approval of the City Engineer
14. Grading operations shall be supervised by a registered civil engineer in accordance with recommendation contained in the required soils report.
15. Prior to issuance of the revised grading permit, the developer shall submit an addendum to the project soils report, which includes information regarding the surcharging operation and subsequent grading for lots 6 through 9.
16. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
17. The Project Geotechnical Engineer shall be retained to review the final grading plans and specifications. The Project Geotechnical Engineer shall approve the grading plans prior to City approval and issuance of the grading permit.